



National Guard Bureau Office of Legislative Liaison



FY10 National Defense Authorization Act

*Analysis of P.L. 111-84, Authorizing Appropriations for the
Department of Defense for Fiscal Year 2010.*

As of 28 October 2009

Bills Status

	Passed in Committee	Passed in Chamber	Agreement	Final Passage	Signed into Law
House (H.R. 2647)	<input checked="" type="checkbox"/> 16 June 2009	<input checked="" type="checkbox"/> 25 June 2009	<input checked="" type="checkbox"/> 7 October 2009	<input checked="" type="checkbox"/> 8 October 2009	<input checked="" type="checkbox"/> 28 October 2009
Senate (S. 1390)	<input checked="" type="checkbox"/> 25 June 2009	<input checked="" type="checkbox"/> 23 July 2009		<input checked="" type="checkbox"/> 22 October 2009	

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Executive Summary

This guide provides only a short summary and analysis of the many National Guard-related provisions in the 1,236 page Conference Report. To obtain a complete understanding of any particular provision, users are encouraged to review the actual legislative language contained in the applicable section of the bills, accompanying reports, or public law. The bill is available on the NGB-LL web page at [HTTP://WWW.NG.MIL/LL/](http://www.ng.mil/LL/)

The Conference Committee released the final Conference Report of H.R. 2647 on 7 October. The House passed the final bill on 8 October. The Senate passed the final bill on 22 October. The bill became P.L. 111-84 on 28 October. Some of the key provisions include:

Army National Guard Trainees, Transients, Holdees, and Students Account Not later than 180 days after enactment the Secretary of the Army must submit a report evaluating options and making recommendations on a Trainees, Transients, Holdees, and Student (TTHS) Account for the Army National Guard. (Sec. 416)

Army National Guard Non-Dual Status Technicians Requested increase was **NOT** provided. Instead, not later than 180 days after enactment the Secretary of Defense must submit an extensive report on duties, requirements, current and future demands, recommended limits, etc regarding National Guard Non-Dual Status Technicians. (Sec. 417) Regarding the levels authorized under Section 414, the conference report states *"The conferees understand that the operational tempo for the reserve components has increased during the current conflicts, and that higher tempo in turn necessitates higher numbers of full-time support personnel to support the reserve components. Consequently, Congress has acted in recent years to increase the number of Army full-time support personnel, including military technicians. In some cases, Congress has authorized more full-time support personnel than was requested by the administration. The conferees understand that the Army continues to assess their temporary and permanent full-time support requirements and is working on a comprehensive study that will address its needs. Under a Presidential waiver of end strength limitations, the Army National Guard's non-dual status technician population is now over 3,000 strong, despite the 1,600 cap on permanent end strength. As such, the conferees feel it is prudent to wait for the result of the full-time support report, as well as the report on nondual status technician requirements found elsewhere in this Act, before increasing the permanent cap. The purpose of the Presidential waiver authority is precisely to satisfy short-term emergency needs. In light of the reports still outstanding and the current strength of the Army National Guard's non-dual status technician population under the Presidential waiver, the conferees feel that the permanent cap of 1,600 remains sufficient for fiscal year 2010."*

Variance in Reserve Component End Strength Allows the Service Secretaries to waive Reserve Component end strength by up to two percent if such a waiver would enhance manning and readiness in essential units or in critical specialties. Previously Service Secretaries only had authority to waive active duty component end strength in this way. (Sec. 418)

Vice Chief, National Guard Bureau The position was **NOT** re-established as provided for in the Senate bill. The Secretary of Defense must submit extensive General Officer report to Congress by April 1, 2010 and it must include an assessment as to whether the Vice Chief, National Guard Bureau position is necessary. (Sec. 502)

Modification of Matching Fund Requirements for National Guard Youth Challenge Increases from 60% to 75% the amount of funding the Department of Defense can provide to a National Guard Youth Challenge program. The bill does **NOT** include the Senate provision that would provide 100% funding for the first two years of a program. (Sec. 593)

Post-Deployment/Mobilization Respite Absence Allows up to \$200 for each day of administrative absence that a member would have earned between January 19, 2007, and the date of the implementation of the PDMRA program had the program been implemented during that time. The authority expires one year from the date of enactment of the NDAA. The 40-day limitation previously included in the House and Senate bills was removed. (Sec. 604)

Stop Loss Special Pay Authorized for any month, or portion of a month beginning October 1, 2009, and ending on June 30, 2011, for a Reserve Component member who serves on active duty while the member's enlistment or period of obligated service is extended, or has the member's eligibility for retirement suspended due to Stop Loss. (Sec. 620)

Continued Service after AGR Retirement Includes provisions allowing for recomputation of retired pay and election to receive Non-regular retirement pay after qualifying for regular retirement. (Sec 642 & 643)

Reserve Component Pre-Mobilization Health Care Doubles from 90 to 180 days the amount of time a Reserve Component member is eligible for TRICARE coverage prior to mobilization. (Sec. 702)

Combat Air Force Restructuring Prohibits retirements of Fighters until 30 days after Secretary of the Air Force submits a detailed report. (Sec.1075)

State Partnership Program Explicit authority was **NOT** included as provided for in the Senate bill. Not later than 90 days after the date of the enactment of NDAA, the Secretary of Defense, in consultation with Secretary of State, must prescribe regulations regarding the use of funds appropriated to the Department of Defense to pay the costs incurred by the National Guard in conducting activities under the State Partnership Program. The Secretary of Defense must send a copy of the regulations to Congress. Additionally, not later than 90 days after enactment and not later than the end of each of the fiscal years 2010 through 2013, the Secretary of Defense must submit a report describing the civilian engagement activities conducted under the State Partnership Program. Finally, the conference report states, "*The conferees believe that the security cooperation activities of the State Partnership Program of the National Guard have made a valuable contribution to global security through building relationships between State National Guard units and over 60 partner nations throughout the world.*" (Sec. 1210)

Military Construction Authorizes \$585 million in Army National Guard Military Construction (\$156 million above the President's Budget Request) and \$236 million in Air National Guard Military Construction (\$108 million above the President's Budget Request.)

Army National Guard

Authorization of Funding

(All Dollars in Thousands)

Army National Guard	President's FY10 Budget Request	House Bill	Senate Bill	Conference Report	FY10 Delta from PB
O&M	\$6,257,034	\$6,268,884	\$6,260,634	\$6,262,184	+\$5,150
OCO O&M	\$321,646	\$321,646	\$321,646	\$321,646	\$0
Military Construction	\$426,491	\$529,129	\$481,773	\$582,056	+\$155,565

Army National Guard End Strength

Army National Guard	President's FY10 Budget Request	House Bill	Senate Bill	Conference Report	FY10 Delta from PB
End Strength	358,200	358,200	358,200	358,200	0
AGR	32,060	32,060	32,060	32,060	0
Dual Status Technicians	26,901	27,210	27,210	27,210	+309
Non-Dual Status Technicians	2,500	2,191	1,600	1,600	0
ADOS	17,000	17,000	17,000	17,000	0

Air National Guard

Authorization of Funding

(All Dollars in Thousands)

Air National Guard	President's FY10 Budget Request	House Bill	Senate Bill	Conference Report	FY10 Delta from PB
O&M	\$5,885,761	\$5,919,461	\$5,888,461	\$5,885,761	\$0
OCO O&M	\$289,862	\$289,862	\$289,862	\$289,862	\$0
Military Construction	\$128,261	\$226,126	\$301,361	\$364,266	+\$236,005

Air National Guard End Strength

Air National Guard	President's FY10 Budget Request	House Bill	Senate Bill	Conference Report	FY10 Delta from PB
End Strength	106,700	106,700	106,700	106,700	0
AGR	14,555	14,555	14,555	14,555	0
Dual Status Technicians	22,313	22,313	22,313	22,313	0
Non-Dual Status Technicians	350	350	350	350	0
ADOS	16,000	16,000	16,000	16,000	0

Procurement

NGREA The bill authorizes \$600M for National Guard and Reserve Equipment Appropriations. The break outs for the Army National Guard and the Air National Guard are not listed. (Sec. 105)

Report on 4.5 Generation Fighter Procurement The bill requires the Secretary of Defense to submit a report on procuring 4.5 generation fighter aircraft. (Sec. 131)

Report on E-8C Joint Surveillance And Target Attack Radar System Aircraft Re-Engining The bill requires the Secretary of the Air Force to submit a report on the replacement of engines for E-8C aircraft. (Sec. 135)

Repeal of Requirement to Maintain C-130E Aircraft The bill repeals the requirement from the FY08 NDAA to maintain C-130E aircraft. (Sec. 136)

Retirement of C-5 Aircraft The bill requires the Secretary of Defense, before lowering the total number of C-5 aircraft below 111, to modify a C-5A aircraft to the Reliability Enhancement re-engining Program as well as submit reports to Congress including the implications to the Air National Guard. (Sec. 137)

Report on Strategic Airlift Aircraft The bill requires the Secretary of the Air Force, in consultation with the Director of the Air National Guard, to submit a report to Congress on force structure and basing of strategic airlift aircraft 90 days before the retirement of C-5 aircraft. (Sec. 138)

Strategic Airlift Force Structure The bill increases the minimum number of strategic airlift aircraft from 299 to 316. (Sec. 139)

Research, Development, Test, and Evaluation

Report on Intelligence, Surveillance, and Reconnaissance Capability The bill limits the obligation of funding for intelligence until the Department of Defense submits a report on the integration of intelligence, surveillance, and reconnaissance capabilities. (Sec. 245)

Operations and Maintenance

Study on Army Modularity The bill requires the Secretary of Defense to conduct a study on the current plan for Army modularity. (Senate Sec. 344)

Military Personnel Authorizations

Army National Guard Trainees, Transients, Holdees, and Students Account Not later than 180 days after enactment the Secretary of the Army must submit a report evaluating options and making recommendations on a Trainees, Transients, Holdees, and Student (TTHS) Account for the Army National Guard. (Sec. 416)

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on permanent end strength. As such, the conferees feel it is prudent to wait for the result of the full-time support report, as well as the report on nondual status technician requirements found elsewhere in this Act, before increasing the permanent cap. The purpose of the Presidential waiver authority is precisely to satisfy short-term emergency needs. In light of the reports still outstanding and the current strength of the Army National Guard's non-dual status technician population under the Presidential waiver, the conferees feel that the permanent cap of 1,600 remains sufficient for fiscal year 2010."

Variance in Reserve Component End Strength Allows the Service Secretaries to waive Reserve Component by up to two percent if such a waiver would enhance manning and readiness in essential units or in critical specialties. Previously Service Secretaries only had authority to waive active duty component end strength in this way. (Sec. 418)

Military Personnel Policy

Vice Chief, National Guard Bureau The position was **NOT** re-established as provided for in the Senate bill. The Secretary of Defense must submit extensive General Officer report to Congress by April 1, 2010 and it must include an assessment as to whether the Vice Chief, National Guard Bureau position is necessary. (Sec. 502)

Continuation on Active Duty of Reserve Components During Physical Evaluation The bill allows members of the Reserve Components returning from mobilization and deployment to remain on active duty while under evaluation for physical or mental disability that could result in separation or retirement or placement on temporary disability retired list or inactive status list. (Sec. 511)

Post Traumatic Stress Disorder/Traumatic Brain Injury The bill requires any service member diagnosed with or asserting PTSD/TBI to receive a medical examination before separation. (Sec. 512)

Legal Assistance for Members of the Reserve Component The bill allows the Secretaries of the military departments to provide legal services to members of the reserve components. (Sec. 513)

Limitations on Scheduling Mobilization or Pre-Mobilization Training The bill encourage the Secretaries of the military departments to avoid scheduling mobilization or pre-mobilization training at a temporary duty location that is outside the normal commuting distance. (Sec. 514)

Number of Reserve Officers Training Corps at Junior Colleges The bill increases the number of ROTC cadets enrolled in advanced courses at junior colleges from 17 to 22. (Sec. 522)

Military Family Readiness Council The bill provides an additional representative from the National Guard to the Department of Defense Military Family Readiness Council. (Sec. 562)

Family and Medical Leave Act The bill includes in the definition of 'Covered Service Member,' members of the National Guard. (Sec. 565)

Report on Child Care of Members of the Armed Forces The bill requires the Comptroller General to submit a report on financial assistance provided by the Department of Defense to members of the Armed Forces that are deployed overseas. (Sec. 573)

Modification of Matching Fund Requirements for National Guard Youth Challenge Increases from 60% to 75% the amount of funding the Department of Defense can provide to a National Guard Youth Challenge program. The bill **DOES NOT** include the Senate provision that would provide 100% funding for the first two years of a program. (Sec. 593)

Military Leadership Diversity Commission The bill includes officers of the National Guard in the Military Leadership Diversity Commission. (Sec. 594)

Suicide Prevention and Yellow Ribbon The bill establishes within the Yellow Ribbon Reintegration Program, a program to provide for members of the National Guard, Reserves, and their families community healing and suicide prevention. (Sec. 595)

Report on Yellow Ribbon The bill requires a report from the Secretary of Defense on the various reintegration programs administered by the National Guard. (Sec. 597)

Compensation and Other Personnel Benefits

Increase in Basic Pay The bill increases basic pay by 3.4%. (Sec. 601)

Post-Deployment/Mobilization Respite Absence Allows up to \$200 for each day of administrative absence that a member would have earned between January 19, 2007, and the date of the implementation of the PDMRA program had the program been implemented during that time. The authority expires one year from the date of enactment of the NDAA. The 40-day limitation previously included in the House and Senate bills was removed. (Sec. 604)

Bonus Authority The bill provides authority to pay the following bonuses and special payments are extended for one year: Select Reserve reenlistment bonus, Select Reserve affiliation or enlistment bonus, the special pay for enlisted members assigned to certain high priority units, the Ready Reserve enlistment bonus for persons without prior service, the Ready Reserve enlistment and reenlistment bonus for persons with prior service, and the Select Reserve enlistment bonus for persons with prior service. (Sec. 611)

Stop Loss Special Pay Authorized for any month, or portion of a month October 1, 2009, and ending on June 30, 2011, for a Reserve Component member who serves on active duty while the member's enlistment or period of obligated service is extended, or has the member's eligibility for retirement suspended due to Stop Loss. (Sec. 620)

Transition Assistance to Members of the Reserve Component Wounded on Active Duty Benefits The bill requires the Secretaries of the military departments to provide members of the Reserve Components that are demobilized or separated with information on the availability of care of warrior transition units and the location of community based warrior transition units. (Sec. 641)

Recomputation of Retired Pay for Service After Retirement The bill allows members of the Retired Reserve recalled to active duty in the Selective Reserve of the Ready Reserve for two years to recompute retired pay. (Sec. 642)

Election to Receive Non-Regular Retirement Pay The bill allows members elect to receive non-regular retired pay upon retirement for service in an active reserve status performed after attaining eligibility for regular retirement. (Sec. 643)

Limitation of Collection of Overpay The bill limits the amount that can be collected from overpayments from 20 percent to 15 percent. (Sec. 661)

Health Care

Reserve Component Pre-Mobilization Health Care Doubles from 90 to 180 days the amount of time a Reserve Component member is eligible for TRICARE coverage prior to mobilization. (Sec. 702)

Transitional Dental Care The bill enhances the dental care provided to members of the Reserve Component on active duty for more than 30 days in support of a contingency operation. (Sec. 703)

TRICARE Coverage for Retired Reserve Before Age 60 The bill allows members of the Retired Reserve qualified for non-regular retirement at age 60, that are not age 60, to qualify for TRICARE Standard. (Sec 705)

Mental Health Assessments The bill requires that each member deployed for contingency operations receive a personal mental health assessment 60 days before deployment, 90 and 180 days from the date of redeployment and not later than 6, 12, and 24 months after deployment. (Sec. 708)

Study and Plan to Improve Mental Health Care The bill requires the Secretary of Defense to implement a plan to improve mental health care access for family members of members of the Reserve Component that are deployed overseas. The bill would require the expansion of existing Department of Defense programs to increase access to mental health care for family members of members of the Reserve Components that are deployed overseas. (Sec. 721)

Report on Stipends for Health Care for Certain Dependents of Members of the Reserve Components The bill requires the Secretary of Defense to submit a report on the number of stipends paid, the average stipend value, and the number of members receiving these stipends. (Sec. 728)

General Provisions

Combat Air Force Restructuring Before retiring legacy aircraft, the bill requires the Secretary of the Air Force to submit to Congress a report detailing: how the force structure will address capability gaps, an explanation of the assessment of the current threat environment, a description of the follow on mission for each affected base, an explanation detailing the decision, a description of the environmental analysis being conducted, an identification of reassignment and manpower authorizations affected, a description of the costs, and the estimate of the cost avoidance. (Sec. 1075)

Matters Relating to Foreign Nations

Report on Authorities to Build the Capacities of Foreign Military Forces The bill requires the President to submit to Congress a report on the Department of Defense's authorities to conduct security cooperation programs to train, equip, and otherwise build the capabilities of foreign militaries. (Sec. 1204)

Modification of Authorities to Build the Capacities of Foreign Military Forces The bill limits the amount of funding available for building the capacities of foreign military forces in support of military stability operations. (Sec. 1206)

State Partnership Program Explicit authority was **NOT** included as provided for in the Senate bill. Not later than 90 days after the date of the enactment of NDAA, the Secretary of Defense, in consultation with Secretary of State, must prescribe regulations regarding the use of funds appropriated to the Department of Defense to pay the costs incurred by the National Guard in conducting activities under the State Partnership Program. The Secretary of Defense must send a copy of the regulations to Congress. Additionally, not later than 90 days after enactment and not later than the end of each of the fiscal years 2010 through 2013, the Secretary of Defense must submit a report describing the civilian engagement activities conducted under the State Partnership Program. Finally, the conference report states, "*The conferees believe that the security cooperation activities of the State Partnership Program of the National Guard have made a valuable contribution to global security through building relationships between State National Guard units and over 60 partner nations throughout the world.*" (Sec. 1210)

Other Authorizations

Drug Interdiction and Counter-Drug Activities The bill authorizes \$1,054,234,000 for counter-drug activities defense-wide. (Sec. 1404)

Legislative Provisions Not Included

Status of the Air National Guard and Air Force Reserve Fleets The Senate bill would have required the Secretary of Defense, in consultation with the Chief of the National Guard Bureau, Director of the Air National Guard, and the Chief of the Air Force Reserve to determine the status of the fleets of the Air National Guard and the Air Force Reserve and a plan to ensure the Air National Guard and Air Force Reserve fleets can meet the needs of combatant commands and homeland defense. (Senate Sec. 343)

Non-Dual Status Technicians The House bill would have increased the statutory limitation of National Guard Non-Dual Status Technicians from 1,950 to 2,541. (House Sec. 414) The Conference reports notes that an Army report on its full-time needs and that Army National Guard Non-Dual Status Technicians are nearly 3,000 strong and it is prudent to wait for the results of the study.

Local Residences for Community Based Care The Senate bill would have allowed a member of the Reserve Component to be assigned to the warrior transition unit nearest that members' permanent residence. (Senate Sec. 655)

Retroactivity of Reduced-Age Retirement The Senate bill would have allowed service from September 11, 2001 to be included in eligibility to receive reduced-age retirement for the Reserve Components. (Senate Sec. 660) The Conference Report notes that with the identification of proper offsets the Committee would approve the provision.

Report on the Cost to Cities and Municipalities that Make Differential Pay to Members of the Reserve Component The House bill would have required the Comptroller General to submit a report to Congress on the cost incurred by cities and municipalities that cover the difference between an employee's military salary when that members is a members of the Reserve Component and on active duty and that members municipal salary. (House Sec. 665)

Suicide Among Members of the Individual Ready Reserve The House bill would have required the Secretary of Defense to ensure all members of the Individual Ready Reserve receive a counseling call from a trained professional every 90 days. (House Sec. 710A)

Report on Post-Deployment Health Assessments for Members of the Reserve Components The Senate bill would have required the Secretary of Defense to submit a report on the feasibility of establishing a Post-Deployment Health Assessment for each member of the Reserve Component returning from deployment. (Senate Sec. 714)

Re-Establishing the Position of the Vice Chief, National Guard Bureau The Senate bill would have re-established the position of the Vice Chief of the National Guard Bureau at a grade above colonel. (Senate Sec. 904)

State Defense Force Improvements The House bill would have expanded authority to state defense forces as integral military component of the United States and provides Department of Defense assistance to state defense forces and allow them to use Department of Defense equipment. (House Sec. 936)